

# Alaska State Legislature

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## Representative Carl Gatto

### Sponsor Statement HB 423

March 29, 2010

For over a year, this nation has been locked in a battle over health care. Roughly 55% of the public, and the entirety of Congressional Republicans, opposed the passage of so-called "health reform" and would like to see the recently-passed health care legislation overturned.<sup>1</sup> Opponents of the health care initiative point to the bill's hidden costs, special exemptions for certain states, and the nineteen point gap between those who strongly support the plan and the larger group that strongly opposes it. Accordingly, I am proposing the *Alaska Health Freedom Act*. The bill is modeled after Idaho HB 391 (and a similar package of legislation in Virginia), which became the first statute enacted by a state legislature to directly challenge the provisions of federal health care "reform."

The *Alaska Health Freedom Act* would:

- Argue that the power to regulate or require a person's health care delivery choices is not found in the U.S. Constitution and is therefore reserved to the people and the States by the 9<sup>th</sup> and 10<sup>th</sup> Amendments, respectively
- Establish that every Alaskan "has the right and is free to choose or decline any mode of securing health care services."

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<sup>1</sup> Rasmussen, Scott. "Health Care Reform." *Politics*. Rasmussen Reports, 21 Mar. 2010.  
<[http://www.rasmussenreports.com/public\\_content/politics/current\\_events/healthcare/september\\_2009/health\\_care\\_reform](http://www.rasmussenreports.com/public_content/politics/current_events/healthcare/september_2009/health_care_reform)>

Rasmussen, Scott. "55% Favor Repeal of Health Care Bill." *Politics*. Rasmussen Reports, 05 Mar. 2010.  
<[http://www.rasmussenreports.com/public\\_content/politics/current\\_events/healthcare/march\\_2010/55\\_favor\\_repeal\\_of\\_health\\_care\\_bill](http://www.rasmussenreports.com/public_content/politics/current_events/healthcare/march_2010/55_favor_repeal_of_health_care_bill)>

- Require the Attorney General to actively protect the aforementioned right to choose a mode of health care services
- Bar public employees and officials from enforcing, imposing, implementing, or collecting any penalty for resisting government-run healthcare.

The four main tactics being employed among states that oppose the federal government's health care overreach are<sup>2</sup>:

- **Legislative Discontent Model**: under this plan, states would pass a resolution discouraging the federal government from implementing nationalized medicine; the recent passage of the federal *Patient Protection and Affordable Care Act* makes mere statements of the Alaska Legislature's disapproval fairly moot.
- **Constitutional Amendment Model**: following this model, state legislatures would offer a constitutional amendment to the voters that would enshrine the right of individuals to make their own health care determinations in the state's constitution; the constitutional amendment model, pursued through Alaska HJR 35, has not garnered sufficient support in the legislature, particularly given the time-sensitive nature of this issue.
- **Statutory Model**: in the statutory model, states enact statutes through the regular legislative process that either establish the freedom to make one's own health care decisions as a right or discount the so-called "right of universal healthcare;" these bills also prohibit state officials and agencies from enforcing, collecting, or implementing fees imposed under the new federal health care plan and direct the state's Attorney General to actively defend the provisions of the bill in court
- **Nullification Model**: finally, states following the nullification model to oppose nationalized health care would enact legislation declaring the *Patient Protection and Affordable Care Act* unconstitutional and null and void within the state's jurisdiction.

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<sup>2</sup> "Health Care Freedom Act." *Legislative Tracking*. The Tenth Amendment Center. 29 Mar. 2010. <<http://www.tenthamendmentcenter.com/nullification/health-care/>>.

The problems with the legislative discontent model now that Congress has actually passed health care “reform” are readily apparent. In addition to the issues mentioned above, the constitutional amendment model is problematic because of the Supreme Court’s general hesitation to hear conflicts between the federal and state constitutions (i.e. gay marriage in MA, CA). The nullification model is the most popular alternative, but seems inherently flawed. There is little-to-no chance the federal courts would rule that states can pass legislation with a simple majority and overturn duly enacted federal law. Unlike the nullification model, the statutory model challenges the constitutionality of the new federal health care statute without limiting our attorney general to a nullification argument. The Alaska Health Freedom Act does not presume to overturn federal legislation, but instead adopts a distinct public policy for Alaska under the reasoning that the *Patient Protection and Affordable Care Act* misinterprets the Constitution. If universal health care is a “right,” shouldn’t the freedom to make one’s own health care decisions be protected from government intrusion? Also, is there no limit on Congress’ power under the Commerce and General Welfare clauses? If Congress can mandate the purchase of any private commodity it so chooses, then what control does an individual really have over their own “pursuit of happiness?”

I hope that this sponsor statement effectively communicates the urgency and practicality of the *Alaska Health Freedom Act*. Questions or concerns can be directed to my staffer, Thomas Reiker, at 465-3163 or [Thomas.Reiker@legis.state.ak.us](mailto:Thomas.Reiker@legis.state.ak.us). I thank you for your time and respectfully request a hearing for HB 423.

Sincerely,

**Representative Carl Gatto**  
Alaska House of Representatives  
*District 13*